

Appointment and Removal of the City Manager



Presentation to the Newburgh City Charter Commission
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A Note on Sources

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This summary was prepared on the basis of a review of the provisions concerning City Manager appointment and removal in the charters of all cities in New York State with Council Manager systems except Elmira.

They are: Auburn, Batavia, Canandaigua, Corning, Geneva, Long Beach, Newburgh, New Rochelle, Ogdensburg, Peekskill, Rye, Watertown, and Watervliet.

We also considered the National Civic League (NCL). *Model City Charter* (8th edition, 2003).

A Note on Language

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Older city charters in New York State are written using male pronouns. For the sake of accuracy, this exact language may be reproduced here. The Newburgh Charter Commission may wish to consider following the model of cities that have more recently adopted or amended their charters, and use gender-neutral language in its proposed draft charter provisions.

Appointment of the Manager

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The Current Newburgh Charter Provision

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§ C5.00. Selection; qualifications; removal from office.
[Amended 5-5-1941 by L.L. No. 1-1941; 2-19-1945 by
L.L. No. 1-1945; 2-24-1953 by L.L. No. 1-1953; L.
1953, c. 878]

“The City Manager shall be the chief administrative and executive officer of the city. He shall be selected by the Council upon the basis of his administrative and executive qualifications. He may be suspended or removed from office at the pleasure of the Council.”

Appointment: Factors to Consider

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1. Appointing Authority and Conditions
2. Tenure or Term
3. Salary
4. Qualifications
5. Residency Requirements
6. Eligibility of Elected Officials

1. Appointing Authority and Required Vote

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- The power to appoint the City Manager in all charters under review was vested in the City Council.
- With one exception, the Council acts by majority vote of the elected council members. This is endorsed by the ICMA.
- In the Watervliet charter the council is styled “the commission.” The mayor appoints the manager, but on the authority of a Council vote.
- In the Auburn charter, a supermajority (5 of 5 members) is required to appoint the manager.

2.1 Manager's Term of Office: "Indefinite"

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- Most charters specify that the City Manager's term is "indefinite" or that he or she serves "at the pleasure of" the Council.
- This practice is endorsed by the NCL because it "discourages contracting for a specified term or an arrangement that reduces the discretion of the council to remove a manager."

2.2 Manager's Term of Office: A Contractual Term of Office?

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- The Watervliet charter provides that “the city commission may enter into an employment contract with a city manager for a period extending beyond the terms of the members of the city commission but not to exceed two years.” Sec. 2 – 103. (a)
- But this charter also provides that “the contract shall state that the city manager serves at the will of the city commission and that the city manager is an at will employee.” Sec. 2 – 103. (b)
- The New Rochelle charter provides in one place that “The City Manager may be appointed for an indefinite period to serve at the will of the Council” and in another that “The City Manager may be appointed for a definite term not to exceed two years, at the expiration of which term the City Manager may be reappointed from time to time in the discretion of the Council, but in no event shall any one period of appointment be for more than two years. (Article VI. Section 40.)

2.3 Manager's Term of Office: Binding Future Councils by Contract

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- The Watertown city charter authorizes the City Council “to enter into a contract with an appointed City Manager for a period of time which may, by reason of its duration, bind a future Council to its terms. However, in no event shall any Council enter into any (1) one contract with an appointed City Manager for a period to exceed (2) two years.” Title III. Section 5.

3. Compensation of the Manager

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- About half the city charters in cities with manager systems specifically authorize the Council to set the level of compensation for the manager, often annually.
- Charters in the remaining cities are silent on the matter of compensation
- However some ,like that of New Rochelle, Follow the model city charter in providing for the negotiation of a written employment contract.

(Article VI. Section 40.)

3.1. Employment Agreement With the Manager

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- The International City Management Association suggests an employment agreement with the manager:
- “These agreements can cover ... salary, other forms of compensation, duties, performance standards, evaluation, and severance procedures. Employment agreements provide mutual protection for the manager and the local government. However, they are not tenure agreements and do not impede the council's power to remove the manager.
- A Model:
http://icma.org/documents/icma_model_employee_agreement.doc.

4.1 General Requirements for Education and Experience

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- Most charters include language similar to Auburn’s provision that “the City Council shall choose a City Manager ***solely*** on the basis of executive and administrative qualifications.” Sec.6.3.
- A number city charters – Rye, Watertown and Watervleit for example – are silent regarding qualifications

4.2 Specific Requirements for Education and/or Experience

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- Several charters, Canandaigua's for example, have specific requirements for education and/or experience or unspecified equivalents:

“Prior to the appointment, the Manager shall be qualified by at least one year's special training in public administration and finance, and by at least three years of successful experience in a responsible executive position in governmental administration, or by any equivalent training or combination of experience and training sufficient to indicate a capacity for effective governmental administration.” Section 5.1

4.3. More specific qualifications

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- Peekskill requires graduation from an accredited college or university and “..at least three years’ experience as a city, village, town or county manager.” Section C10.a.a.

4.4. Manager Qualifications: Model City Charter 8th Edition

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- Versions in force for many NYS jurisdictions are based on an earlier edition of the Model city Charter . The new edition, with greater focus on local government experience, dates to 2003.
- Article III. Section 301 – “The city manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management.”

4.5. ICMA Minimum Manager Qualifications (2003)

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- ICMA considers the following to be the minimum qualification for a city manager:

“A master’s degree with a concentration in public administration, public affairs or public policy and two years’ experience in an appointed managerial or administrative position in a local government or a bachelor’s degree and 5 years of such experience.”

6. Residence Requirements for the City Manager

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- No charters examined require residence in the city at the time of hiring.
- Most charters require a newly appointed manager to take up residence in the city after appointment. In Corning, he or she must do so within 120 days.
- Batavia requires Council action to authorize temporary residence outside the city.
- Canandaigua requires an act of the Council to authorize residence outside the city. (Model City Charter endorsed, 2003)
- Rye requires residence in Westchester County.
- Long Beach requires residence within a 50 mile radius.

Residency – Public Officer’s Law

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- Where the city charter is silent, and no specific exception has been made, state law requires residency in the municipality by public officers:
“1. No person shall be capable of holding a civil office who shall not be a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised...” Public Officers Law. Article 3.

Waiting Period for Elected Officials

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- Most charters are silent on whether a sitting elected official may be appointed City Manager.
- The City of Geneva charter says that “No Councilor or Supervisor shall be appointed City Manager during the term of which elected or within two years after the expiration of his or her term.” Article IV. Sec. 4.1.
- The Peekskill charter provides that “No elected official of the city shall be eligible for the position of City Manager until the expiration of at least one year after separation from city government.” Section C. 10.a.
- The New Rochelle charter provides that “No person elected to the Council shall, during the time for which he is elected, be chosen as City Manager.” (Article VI. Section 39)

Removal of the City Manager

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Key Considerations Regarding Manager Removal

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1. Required Vote to Remove or Suspend
2. Notification of Manager and right to respond
3. Request for public hearing
4. Final Action to Remove
5. Compensation during removal process or suspension period
6. Bar to review in a court of law

1. Required Vote to Remove or Suspend

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- Removal of the Manager is a prerogative of the Council
- Both initiation of removal, and final removal, are most commonly done by a majority vote of those elected
- Extraordinary majorities: Auburn requires unanimity (the same as for appointment), Canandaigua requires 2/3 (6 votes), and Rye 4 of 6 Council members(also 2/3).

2. Preliminary Resolution

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- A preliminary (first) resolution is usually required for removal, in which reasons are specified
- The preliminary resolution may suspend the manager for a specified time (30- 45 days)
- Long Beach allows removal “at any time for any reason the council may deem sufficient.” Section 20.3
- Watertown provides generally for removal “on charges, after a hearing”. Title II, section 11.
- Watervliet requires no notice and provides no detail

2 and 3. Notification of Manager and Right to Respond

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- Most charters require “prompt” or “immediate” notification . Some specify a method if delivery in person is not possible.
- A time period, usually five days, is specified in which the Manager may request a public hearing
- If requested, a hearing must be held within a specified period (e.g. 20 to 30 days from the date of the request)
- The manager may prepare a written response, most typically within a specified time period before the scheduled hearing
- But Peekskill has no response/appeal process for the manager in its charter.

4. Final Removal

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- If no hearing is requested: by resolution at a meeting held a specified period (e.g. 5 days) after delivery of the preliminary resolution.
- If a hearing is requested: by resolution after the hearing is held.
 - May be at the same meeting
 - May be at the next scheduled meeting
- Most charters specify that effect of final removal vote may be immediate

5. Compensation During Removal Process

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- Charters generally provide that compensation of the Manager continues during the removal process, or a period of suspension, and until removal is final.
- Auburn and Watervliet generally authorize severance pay
- Canandaigua provides for compensation for severance and accrued vacation
- Peekskill allows for salary and 3 months severance, but no expenses during period of suspension
- Rye allows for three months severance, except in the case of misconduct

6. Finality of Removal

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- Most charters do not address this question
- The Ogdensburg charter provides that “the action by the city Council in suspending or removing the City Manager shall not be subject to review by any court or agency.” Section C.20.D.
- Peekskill has a similar provision. Section C.10.a.3.

The Model City Charter (8th Edition) on Removal

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- **Section 3.02.**

- Opportunity to resign offered by Council
- If no resignation is forthcoming, suspension by majority of council members elected, setting forth reasons
- Presentation of resolution to manager
- 15 days to reply
- Public hearing on request, must be held no sooner than 15 days from date of request
- Second vote required to remove
- Full salary paid until effective date of removal

Questions?

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